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February 2, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**
WT Docket No. 05-265

Dear Ms. Dortch:

In its 2010 National Broadband Plan, the Commission found that data roaming is in the public interest, stating that “data roaming is important to entry and competition for mobile broadband services and would enable customers to obtain access to e-mail, the Internet and other mobile broadband services outside the geographic regions served by their providers.”^{1/} In particular, the Broadband Plan recognized the importance of data roaming to ensuring that carriers are able to achieve “wide, seamless and competitive coverage,” and recommended that the Commission “move forward promptly in its open proceeding on roaming obligations for data services.”^{2/} In implementing the Broadband Plan, the Commission confirmed that its “underlying policy goals” for data roaming “remain the same as for mobile voice service roaming,” namely “to have service provided by new entrants in competition with established incumbents; to ensure that consumers have access to seamless coverage nationwide; and to provide incentives for both new entrants and incumbent service providers to invest and innovate by using available spectrum and constructing wireless network facilities on a widespread basis.”^{3/}

T-Mobile and virtually all other wireless providers with the exception of AT&T and Verizon, along with numerous consumer and public interest organizations, have called upon the

^{1/} *Connecting America: The National Broadband Plan*, The Federal Communications Commission (March 2010) at 49, available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“Broadband Plan”).

^{2/} *Id.*

^{3/} *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010) at ¶ 50.

Commission to follow the sound recommendations in the Broadband Plan and require that data roaming be made available on just, reasonable, and nondiscriminatory terms and conditions. And there is now a near-unanimous record demonstrating the adoption of such a requirement is a simple and straightforward step the Commission can take today that would significantly advance its goal of facilitating ubiquitous access to broadband services. Although T-Mobile and many others had expected the Commission would adopt a data roaming rule before the end of the year consistent with its broadband action agenda, for various reasons that did not happen. However, it is now well into the first quarter of 2011 and T-Mobile urges the Commission to promptly act on this important issue and adopt such a rule at its March 2011 Open Meeting, if not sooner.

The record in this proceeding overwhelmingly confirms that a rule requiring data roaming on reasonable terms and conditions will promote continued investment by wireless carriers in their own network construction, creating additional jobs, enhancing competition, and providing consumer choice. As the Commission has found, roaming “can offer entrants access to greater network coverage while they are deploying their own networks,” and data roaming in particular can play an important role in enabling new entrants to achieve a “competitive level of coverage.”^{4/}

In T-Mobile’s experience, these findings are right on the mark. As T-Mobile previously has discussed,^{5/} the two largest carriers, AT&T and Verizon, obtained their spectrum well before T-Mobile did, giving them a head start in building their networks generally. The availability of voice roaming has created economic incentives for T-Mobile to expand its network that would not have existed were it not for the increase in demand for T-Mobile service by customers in areas where T-Mobile originally maintained coverage through roaming arrangements. In particular, T-Mobile has been able to build out its network in smaller and rural communities because voice roaming allowed it to provide service in the very sparsely populated areas adjacent to these communities where customers often traveled and therefore expected service. T-Mobile currently provides 2G voice and data service to more than 297 million pops, or more than 95 percent of the total nationwide population. Of this amount, T-Mobile serves approximately 277 million, or approximately 89 percent of the total population, using its own facilities. T-Mobile continues to rely on roaming arrangements to serve the remaining 6 percent of total covered pops; this coverage is essential to ensure that our customers have access to the ubiquitous service when traveling away from their home markets that wireless consumers have come to expect.

Similarly, voice roaming has enabled T-Mobile to locate call centers in areas in which it previously lacked coverage and build a facilities-based footprint over time as a customer base developed. In Maine, for example, the availability of 2G roaming had a direct impact on T-

^{4/} See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 (2010) (“*Wireless Competition Report*”) at 47.

^{5/} See Comments of T-Mobile USA, Inc., WT Docket No. 05-265 (filed June 14, 2010) at 8.

Mobile's ability to establish a facilities-based presence in several markets that it did not previously serve. Although T-Mobile had very few facilities in Maine prior to 2007, the availability of roaming arrangements played an important role in enabling T-Mobile to locate a call center in the state, creating jobs and establishing a presence that attracted a new and growing customer base. The traffic that T-Mobile generated through its roaming arrangements created economic incentives for T-Mobile to construct its own facilities and expand its presence in the market. Today, T-Mobile employs more than 650 people at its Oakland, Maine, call center and has more than 45 sales outlets throughout the state, providing numerous additional jobs. And Maine is but one example where the availability of roaming arrangements has helped make it possible for T-Mobile to establish itself as a facilities-based competitor to AT&T and Verizon. Some other markets in which roaming has helped enable T-Mobile to grow to become a facilities-based provider include State College, Pennsylvania, Knoxville, Tennessee, and southeastern New Mexico.

As T-Mobile recently announced, it continues to invest to expand and enhance its network coverage by adding approximately 5,000 additional cell sites, enabling it to provide facilities-based service to more than 290 million potential customers by 2013.^{6/} Although these ongoing investments in network expansion will reduce T-Mobile's need to rely on roaming going forward, it will not eliminate it. As the Broadband Plan recognized, few, if any, carriers provide "ubiquitous nationwide service entirely through their own facilities, particularly in the initial stages of construction and in rural areas."^{7/} Indeed, no carrier has truly nationwide coverage, and even the two largest carriers, AT&T and Verizon, must rely on roaming arrangements in certain areas in order to ensure the seamless and reliable coverage wireless customers have come to expect.

In T-Mobile's case, notwithstanding its ongoing investments in network expansion, it will continue to require roaming arrangements to achieve a nationwide service footprint in those regions of the country where it does not yet have its own facilities. These areas primarily encompass the markets in which T-Mobile originally offered service in partnership with several important regional service providers.^{8/} These markets include areas in virtually every state. Without the availability of roaming arrangements in these areas, T-Mobile would be unable to ensure that its customers always have seamless service when they travel. A basic data roaming right is also essential to ensuring carriers have the economic incentive to develop multiband handsets that are capable of interoperability across different spectrum bands,

^{6/} See, e.g., *Communications Daily*, January 21, 2011, at 9.

^{7/} *National Broadband Plan* at 49.

^{8/} These include, for example, the markets previously served by Dobson (parts of northern Minnesota, Michigan, Wisconsin, and Alaska), Edge Wireless (parts of California, Oregon, Washington, and Idaho), Farmer's Cellular (parts of Alabama), Poka Lambro (parts of Texas), Centennial (parts of Louisiana and Illinois), and Alltel (parts of Montana, North Dakota, and South Dakota).

which is becoming increasingly important given the concentration of spectrum below 1 GHz in the hands of AT&T and Verizon.^{9/}

As the record in this proceeding makes clear, the increasing adoption of smartphones is rapidly shifting the volume of wireless traffic from voice to data, and voice itself increasingly is becoming a data service as carriers deploy 4G technologies. Through its aggressive build out efforts since obtaining and clearing its spectrum, T-Mobile now provides 3G or better service to more than 212 million pops, or 68 percent of the population, and 4G HSPA+ service to approximately 200 million pops, or 64 percent of the population.^{10/} While our coverage will grow, it still will not be ubiquitous throughout all of the United States, and there will still be millions of consumers that can only be served through roaming agreements when they travel outside our own service footprint. Accordingly, notwithstanding T-Mobile's and other carriers' ongoing efforts to expand their own networks, the importance of a data roaming right on reasonable terms will only increase.

As T-Mobile previously has discussed,^{11/} however, while the market for roaming services in many of these regions once was competitive (and reciprocal), AT&T has now acquired most of T-Mobile's former roaming partners (or parts of their legacy networks), significantly reducing (and in many cases eliminating) T-Mobile's choice of roaming providers. Although T-Mobile is willing to enter into agreements that cover 3G or better services and has done so in several markets, as T-Mobile has indicated,^{12/} to date it has not been able to achieve a roaming agreement for 3G (or better) service with AT&T, and as result it cannot currently offer any 3G or better service in the areas in which it must rely on AT&T roaming to achieve ubiquitous coverage. Due to the dominant position AT&T has attained in the data roaming wholesale market through its acquisition of most of T-Mobile's previous roaming partners, we are unable to negotiate reasonable and non-discriminatory roaming arrangements in the absence of some level

^{9/} See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 (2010) at ¶ 275 (noting that, of the sub-1 GHz spectrum, Verizon and AT&T hold 78 percent of the licensed MHz-POPs in the combined cellular and 700 MHz bands). If the Commission were to approve AT&T's pending application to acquire the 700 MHz band spectrum held by Qualcomm, that percentage would increase even further.

^{10/} By virtue of its ongoing aggressive build-out, T-Mobile now has the largest network in the U.S. where consumers can benefit from 4G services. See T-Mobile 4G Service Now Available in More Markets and on More Devices," *Press Release* (Nov. 2, 2010) available at <http://press.t-mobile.com/articles/americas-largest-4g-network>.

^{11/} See Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 1 (filed Nov. 9, 2010).

^{12/} See T-Mobile Comments at 7-8 (citing Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 9, 2010) at 1.

of Commission oversight. As noted above, adoption of a data roaming rule is a straightforward step the Commission can take today that is no more intrusive than the step the Commission took in 2007 to ensure competitive voice roaming.

Finally, since AT&T continues to assert that “data roaming agreements are commonplace and that 3G data roaming agreements are being negotiated,”^{13/} T-Mobile takes this opportunity to update the Commission on its own efforts to negotiate a 3G roaming agreement with AT&T. Following T-Mobile’s statement for the record that it has been unable to achieve a 3G roaming agreement with AT&T, AT&T did approach T-Mobile with an offer to negotiate. These negotiations have not made reasonable progress, and T-Mobile and AT&T have not been able to agree on a reasonable rate structure or technical parameters under which AT&T would make 3G roaming available at this time. As a result, notwithstanding AT&T’s public claims that it is willing to negotiate in good faith to reach 3G roaming arrangements, T-Mobile continues to believe, and the experiences of many other carriers confirm,^{14/} it is essential the Commission promptly adopt a basic rule requiring that data roaming be made available by all carriers on just, reasonable, and non-discriminatory terms and conditions.

Sincerely,

/s/

Thomas J. Sugrue
Senior Vice President, Government Affairs

cc: (all via e-mail)
Rick Kaplan
Josh Gottheimer

^{13/} See Letter from Jeanine Poltronieri, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Jan. 19, 2011) at 2.

^{14/} See, e.g., Letter from Amy C. Tykeson, Bend Cable Communications, LLC to Marlene H. Dortch, Secretary, FCC (Nov. 16, 2010) (Bend Cable has been unable to secure a data roaming agreement with national carriers); Letter from Daryl A. Zakov on behalf of Mosaic Telecom to Marlene H. Dortch, Secretary, FCC (Jan. 14, 2011) (Mosaic has been unable to reach a 3G roaming agreement with AT&T); Reply Comments of Cox Communications, WT Docket No. 05-265 (July 12, 2010) at 7 (discussing the need for a “shot clock” to govern roaming negotiations); Letter from Michael H. Pryor, Counsel to Cox Communications, to Marlene H. Dortch, Secretary, FCC (Dec. 29, 2010) (same); Comments of Cellular South, Inc., WT Docket No. 05-265 (June 14, 2010) at 21 (describing difficulties in obtaining data roaming arrangements); Comments of SouthernLINC Wireless, WT Docket No. 05-265 (June 14, 2010) at 34 (same); Letter from Rebecca Murphy Thompspon, RCA, and Caressa D. Bennet, RTG, to Marlene H. Dortch, Secretary, FCC (Nov. 12, 2010) (reporting the difficulties of several wireless providers in obtaining roaming arrangements).

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